

PARLIAMENT  
OF KENYA  
LIBRARY

ANNEX IV



**EAST AFRICAN COMMUNITY**

**A Bill of an Act**

**Entitled**

**THE EAST AFRICAN LEGISLATIVE ASSEMBLY ELECTIONS ACT, 2006**

**EAC SECRETARIAT  
Arusha, Tanzania  
June 8<sup>th</sup>, 2006**

## ARRANGEMENT OF SECTIONS

### Section

#### Part I- PRELIMINARY

1. Citation
2. Interpretation
3. Composition of the Assembly
4. Term of the Assembly
5. Right to vote for members of the Assembly
6. Constituencies

#### Part II - NOMINATION OF CANDIDATES AND THEIR ELECTION TO THE ASSEMBLY

7. Nomination of candidates
8. Election of members of the Assembly
9. By elections

#### PART III - QUALIFICATIONS, DISQUALIFICATIONS AND TENURE OF OFFICE

10. Qualification for election
11. Tenure of office of members of the Assembly

#### PART IV - ELECTION PETITIONS

12. Determination of questions of membership
13. Grounds for setting aside an election
14. Service of notice of petition
15. Trial of election petitions
16. Withdrawal of election petition
17. Petition to abate on death of petitioner

PART V - MISCELLANEOUS

18. Session of the Assembly
19. Dissolution of the Assembly
20. Rules
21. Regulations

A Bill for an Act

ENTITLED

THE EAST AFRICAN LEGISLATIVE ASSEMBLY  
ELECTIONS ACT, 2006

An Act to make provision for elections of members of the East African Legislative Assembly and related matters in accordance with Article 50 of the Treaty.

**BE IT ENACTED** by the East African Community and assented by the President of the Republic of Kenya, the President of the United Republic of Tanzania and the President of the Republic of Uganda.

PART I – PRELIMINARY

**Citation**

1. This Act may be cited as the East African Legislative Assembly Elections Act, 2006.

**Interpretation**

2. In this Act unless the context otherwise requires-

“Assembly” means the East African Legislative Assembly established by Article 9 of the Treaty;

“candidate” means a person who is nominated to stand for election to the East African Legislative Assembly;

“clerk” means the clerk of the East African Legislative Assembly appointed under Article 48 of the Treaty;

“Community” means the East African Community established by Article 2 of the Treaty;

“constituency” means one of the areas into which East Africa is divided for purposes of Article 50 of the Treaty’;

“Council” means the Council of Ministers of the Community established by Article 9 of the Treaty;

“court” means the East African Court of Justice established by Article 9 of the Treaty;

“election” means an election to the East African Legislative Assembly;

“election petition” means a petition filed in accordance with section 12;

“member” means a member of the East African Legislative Assembly;

“nomination” means nomination as a candidate to stand for election to the East African Legislative Assembly;

“Partner States” means the Republic of Kenya, the United Republic of Tanzania and the Republic of Uganda and any other country granted membership to the Community under Article 3 of the Treaty;

“Returning Officer” means the Clerk to the National Assembly of a Partner State;

“Secretary General” means the Secretary General of the East African Community provided for under Article 67 of the Treaty;

“Speaker” means the Speaker of the Assembly provided for under Article 53 and 56 of the Treaty;

“Summit” means the Summit of Heads of State established by Article 9 of the Treaty;

“Treaty” means the Treaty establishing the East African Community and any annexes and protocols thereto;

“voter” means a member of the National Assembly of the Partner State present and voting during an election.

### **Composition of the Assembly**

3. The Assembly shall consist of:

- (a) twenty seven members elected by the National Assemblies of the Partner States;
- (b) five ex-officio members consisting of-
- (c) the Minister responsible for regional co-operation from each of the Partner States; and
- (d) the Secretary General and the Counsel to the Community.

### **Term of the Assembly**

4. (1) The term of the Assembly shall be five years from the date of the first sitting after the election of members.
- (2) Where there exists a state of war or a state of emergency in any of the Partner States which would prevent a normal election from being held, the Assembly may by resolution supported by not less than two-thirds of all members of the Assembly, extend the life of the Assembly for a period not exceeding six months at a time.

### **Right to vote for members of the Assembly**

5. (1) Every member of the National Assembly of the Partner States has a right to vote for members of the Assembly.
- (2) It is the duty of every member of the National Assembly of a Partner State to register as a voter for election of members of the Assembly.

6.
  - (1) For purposes of the election of the members of the Assembly, the East African Community shall be divided into constituencies and each constituency shall be represented by nine members.
  - (2) The nine members referred to in sub-section (1) collectively represent each constituency.
  - (3) Notwithstanding the provisions of sub-section (2) members are free to vote on any issue requiring a vote in the Assembly without being bound by the decision of other members representing the constituency he or she comes from.

**PART II - NOMINATION OF CANDIDATES AND THEIR  
ELECTION TO THE ASSEMBLY**

**Nomination of candidates**

7. Subject to the provisions of Article 50 of the Treaty, nomination of candidates for the Legislative Assembly shall be conducted in a transparent and democratic manner as prescribed by the respective National Assemblies of the Partner States.

**Election of members of the Assembly**

8. (1) An election of members of the Assembly shall be held within thirty days before the expiration of the term of the Assembly.
- (2) Every person elected to the Assembly shall take the Oath or Affirmation of Allegiance to the Treaty as specified in the East African Legislative Assembly(Powers and Privileges) Act, 2003.
- (3) Except for the purpose of taking the oath or affirmation referred to in subsection (2) no person shall sit or participate in the Assembly before taking the said Oath or Affirmation to the Treaty.

**By-elections**

9. (1) Whenever a member of the Assembly
- (a) dies; or
  - (b) where the seat of a member of the Assembly becomes vacant under Article 51 of the Treaty;
  - (e) where the seat of a member of the Assembly becomes vacant under section 8 of this Act, the Clerk shall notify the National Assembly of the Partner State from where the member comes ~~from~~ in writing within twenty one days after the vacancy has occurred; and by election shall be held within sixty days after the vacancy has occurred;
- (2) A by-elections shall not be held under this section within six months before the holding of elections for all the members of the Assembly.



## PART III - QUALIFICATIONS, DISQUALIFICATIONS AND TENURE OF OFFICE

### Qualification for election

10. (1) A person is qualified to be a member of the Assembly if that person:
- (a) is a citizen of a Partner State;
  - (b) is qualified to be elected a member of the National Assembly of a Partner State under its Constitution;
  - (c) has completed a minimum formal education of Advanced Level standard or its equivalent
  - (d) is not holding office as a Minister in a Partner State;
  - (e) is not an officer in the service of the Community; and
  - (f) has proven experience or interest in consolidating and furthering the aims and the objectives of the Community.
- (2) A person is not qualified for election as a member of the Assembly if that person-
- (a) is of unsound mind;
  - (b) has been adjudged or otherwise declared bankrupt under any law in force in any of the Partner States and has not been discharged; or
  - (c) is under a sentence of death or a sentence of imprisonment exceeding six months imposed by any competent court without the option of a fine.

### Tenure of office of members of Assembly

11. (1) A member of the Assembly shall vacate his or her seat in the Assembly-
- (a) if he or she resigns his or her office in writing signed by him or her and addressed to the Speaker;
  - (b) upon his or her ceasing to be qualified for election as an elected member;
  - (c) upon dissolution of the Assembly ;

- (d) upon his or her election or nomination as a member of the National Assembly of a Partner State;
- (e) upon his or her appointment as a Minister in the Government of Partner State;
- (f) if that person is absent from fifteen sittings of the Assembly without permission in writing of the Speaker during any period when the Assembly is continuously meeting and is unable to offer satisfactory explanation to the relevant committee of the Assembly;
- (g) if that person is appointed an officer in the service of the Community;  
or
- (h) upon his or her conviction of an offence and sentenced to imprisonment for a term exceeding six months and if no appeal has been preferred against such a decision.

2. A member who seeks to participate in elections of a Partner State as a candidate shall, upon nomination to participate, resign his or her office in the Assembly.

## PART IV - ELECTION PETITIONS

### Determination of questions of membership

12. (1) Pursuant to the provisions of Article 52(1) of the Treaty, the election of any candidate as a member of the Assembly may be declared void only upon an election petition.
- (2) The East African Court of Justice shall have jurisdiction to hear and determine such an election petition.
- (3) The East African Court of Justice shall draw up its own procedure of admitting and determining such petition
- (4) An election petition may be filed by any of the following persons:
  - (a) a candidate who loses an election; or
  - (b) a member of the National Assembly of a Partner State supported by not less than fifty members of that National Assembly
- (5) Every election petition shall be filed within thirty days after the day on which the result of the election is published by the respective Returning Officer in the official Gazette of the Partner States.

### Grounds for setting aside an election

13. (1) The election of a candidate as a member of the Assembly shall only be set aside on any of the following grounds if proved to the satisfaction of the court-
  - (a) that the exercise did not comply with the provisions fo the Treaty and this Act relating to elections, to the extent of affecting the results in a substantial manner;
  - (b) that a person other than the one elected won the election; or

- (c) that the candidate was at the time of his or her election not qualified or was disqualified for election as a member of the Assembly.
- (2) Where an election is set aside a fresh election shall be held as if it were a by-election in accordance with section 9 of this Act.
- (3) Any ground specified in sub-section (1) of this section shall be proved on a balance of probabilities.

### **Service of notice of petition**

14. Notice in writing of the presentation of a petition accompanied by a copy of the petition shall, within seven days after the filing of the petition, be served by the Petitioner or Petitioners on the Respondent or Respondents, as the case may be.

### **Trial of election petitions**

15. Every election petition, filed under this Act, shall be tried in open court.

### **Withdrawal of election petition**

16. (1) An election petition shall not be withdrawn except with leave of the court and after such notice has been given as the court may direct.
- (2) On the hearing of the application for withdrawal, any person who might have been a petitioner in respect of the election to which the petition refers may apply to the court to be substituted as a petitioner for the petitioner who desires to withdraw.
- (3) The court may substitute as a petitioner an applicant under sub-section (2) and may further, if the proposed withdrawal has been, in the opinion of the court, induced by any corrupt bargain or consideration, by order, direct that the security given on behalf of the original petitioner shall remain as security for any costs that may become payable by the substituted petitioner and that the original petitioner shall be liable to pay the costs.
- (4) If a petition is withdrawn the petitioner shall be liable to pay the costs of the respondent.

### Petition to abate on death of petitioner

17. An election petition shall abate upon the death of the sole petitioner or of all the petitioners.

## PART V - MISCELLANEOUS

### Session of the Assembly

18. (1) Where a new Assembly is elected, the Chairperson of the Summit shall, by proclamation, appoint the place and a date not beyond ten days after the expiry of the term of the Assembly or of the extended period, as the case may, for the first sitting of the new Assembly.
- (2) A session of the Assembly shall be held at such place within East Africa and shall, commence at such time as the Speaker may, by proclamation, appoint.
- (3) The Speaker may, after consultations with the Chairperson of the Summit, prorogue the Assembly by proclamation.
- (4) A session of the Assembly shall be held at least once a year but the period between one session and the next following session shall not be more than twelve months.

### Dissolution of the Assembly

19. (1) The Assembly shall stand dissolved upon the expiration of its term as prescribed by section 4 of this Act.
- (2) Dissolution of the Assembly shall be done through proclamation by the Chairperson of the Summit.

### Rules

20. (1) The National Assembly of each Partner State shall, by statutory instrument, make rules prescribing any matter which is required or authorized by the Act to be prescribed or which in its opinion is necessary or convenient to be prescribed for carrying out or giving effect to the provisions of Article 50 of the Treaty.

(2) Without prejudice to the general effect of sub-section (1), rules may be made for any or all of the following matters-

- (a) the categories of person to be elected members of the Assembly;
- (b) the appointment and nomination of candidates;
- (c) the appointment of the polling day;
- (d) the mode of campaigns to be used before the elections of the members of the Assembly;
- (e) the voting and declaration of results; and
- (f) transmission of the results of the elected members of the Assembly for its publication in the official Gazette of the Community.

### Regulations

21. (1) The Council may, with the approval of the Legislative Assembly, by statutory instrument, make regulations for giving effect to the provisions of this Act.

(2) Without prejudice to the general effect of subsection (1), regulations may be made under that subsection for any or all of the following matters-

- (a) the form of any document to be used in carrying out any purposes of this Act;
- (b) the duties of the Returning Officer.

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